

PUBLIC UTILITIES COMMISSION

550 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

February 3, 1995

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20036

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Re: PR Docket No. 94-105

Dear Mr. Caton:

Please find enclosed an original and eleven copies of Reply To Opposition of AirTouch Communications to CPUC Petition For Clarification in the above-referenced docket.

Also enclosed is an additional copy of this document. Kindly file-stamp this copy and return it to me in the enclosed, self-addressed stamped envelope.

If you have any questions, please call the undersigned at (415) 703-2047.

Very truly yours,

Ellen S. LeVine
Attorney for CPUC

ESL:dp

Enclosures

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PR Docket No. 94-105

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obtained by the CPUC from the California Attorney General ("AG") and included in the CPUC petition requires such an affidavit.

AirTouch's claim is baseless. The type of information submitted by the cellular carriers to the AG and obtained by the CPUC is no different than the type of information submitted by the cellular carriers to the CPUC directly. As the context within the discussion of pricing indicates, the information provided by the cellular carriers to the AG discusses marketing strategies employed by certain carriers. The information provided by the cellular carriers to the CPUC consists of financial and subscriber information related to specific cellular carriers. Neither source of information itself contains specific allegations of anticompetitive or discriminatory conduct. Accordingly, the CPUC's initial conclusion that the affidavit requirement did not apply to either source of information was correct.

To be sure, like those who filed in opposition to the CPUC, the CPUC simply looked at all information that it obtained directly and indirectly from cellular carriers, and drew certain

(Footnote continued from previous page)

appended with source documents obtained by the CPUC from the AG. The affidavit attests to the manner in which the source documents were obtained. In addition, the CPUC filed a request for confidential treatment of the AG information.

conclusions based on such information. In this case, the CPUC concluded that, in its totality, the information demonstrated that cellular markets in California are not yet sufficiently competitive to remove state regulatory oversight of intrastate cellular service rates.

AirTouch effectively concedes that if the CPUC must submit the type of affidavit that AirTouch believes is required, then, given the absence of discovery in this proceeding, the CPUC will be precluded from relying on the information it obtained from the AG.² AirTouch, however, should not be allowed to defeat the CPUC petition by preventing the CPUC from submitting information which is material and relevant to the CPUC petition, and which, by itself, contains no specific allegations of anticompetitive practices or behavior.

In sum, AirTouch's opposition is without merit. The CPUC has complied with all applicable requirements in submitting information which it indirectly obtained from cellular carriers. The CPUC therefore requests that the FCC clarify that the CPUC need only attest by affidavit to how it obtained the information

2. The opportunity for discovery in the CPUC's Investigation, I.93-12-007, in no way mitigates the denial of due process that would arise from accepting AirTouch's interpretation of FCC authentication requirements in the absence of discovery in this proceeding. The CPUC was an adjudicator, not a party in I.93-12-007 and no party to the proceeding introduced or relied upon the documents at issue. Moreover, neither state administrative procedures, nor the litigation strategy of parties to a state administrative proceeding, produce any lawful basis for abridging the due process rights of the state in a separate federal agency proceeding.

from the AG, and include the source documents from the AG
underlying the CPUC petition.

Respectfully submitted,

PETER ARTH, JR.
EDWARD W. O'NEILL
ELLEN S. LeVINE

By: Ellen S. LeVine
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Attorneys for the People of the
State of California
Public Utilities Commission
of the State of California

February 3, 1995

CERTIFICATE OF SERVICE

I, Ellen S. LeVine, hereby certify that on this 3rd day of February, 1995 a true and correct copy of REPLY TO OPPOSITION OF AIRTOUCH COMMUNICATIONS TO CPUC PETITION FOR CLARIFICATION was mailed first class, postage prepaid to all known parties of record.



Ellen S. LeVine